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Attorney for Petitioner
 DELANO TOLDEN

FILED
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 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

DELANO TOLDEN,

Petitioner,

v.

JAMES E. TILTON, Director,
 Department of Corrections,

Respondent.

D.C. No.

C08-03782

**MOTION FOR APPOINTMENT OF
 COUNSEL; DECLARATION OF
 VICTORIA H. STAFFORD IN
 SUPPORT OF THAT MOTION**

Pursuant to 18 U.S.C. 3006A(a)(2) and 28 U.S.C. 2254(h) petitioner, through his present counsel Victoria H. Stafford, respectfully requests appointment of counsel to represent him in this action. Based on the attached declaration of petitioner's counsel present counsel, who was also counsel in the state appeal proceedings, petitioner submits that the interests of justice require appointment of present counsel or substitute counsel to represent petitioner in these proceedings. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

If the court appoints present counsel to represent petitioner henceforth, petitioner requests that the appointment be made retroactive to July 20, 2008 to include counsel's assistance in preparing the petition. *See* 28 U.S.C. §3006A(b).

Dated: August 6, 2008

Respectfully submitted,


 VICTORIA H. STAFFORD

**DECLARATION OF VICTORIA H. STAFFORD
IN SUPPORT OF PETITIONER'S MOTION
FOR APPOINTMENT OF COUNSEL**

I, Victoria H. Stafford, declare the following to be true:

1. Under appointment from the California Court of Appeal, I represented petitioner on his first direct appeal and upon reversal on his second direct appeal. I am a member of the California State Bar, the bar of the U.S. Court of Appeals for the Ninth Circuit, and the United States District Courts in the Northern and Central Districts. I am also a member of the Bar of the United States Supreme Court. My address is 6114 LaSalle Avenue, No. 161, Oakland, CA 94611. My telephone number is (510) 893-2783. My State Bar number is 148053.

2. I prepared the Petition for Writ of Habeas Corpus on Mr. Tolden's behalf because due to his mental retardation he is incapable of preparing it himself. My belief that he is unable to prepare the petition himself is based on the following facts:

3. At trial, Dr. Timothy Darning, a clinical forensic psychologist with an expertise in neuro-cognitive disorders including mental retardation, testified that Mr. Tolden has a full-scale IQ of 67 which places him in the bottom first percentile of the population. He further stated that Mr. Tolden has significant cognitive limitations. His scores in academic skills testing place him the bottom second percentile of the population, and his reading skills are between second and fourth grade levels. He has significant memory deficiencies. Dr. Darning also testified that IQ testing conducted by the Department of Corrections was consistent with his findings. Darning stated that he believed that the language on the sex registration notification form, "I must register within 14 days of coming to any city, county or city and county in which I am domiciled with the law enforcement agency having jurisdiction over my place of residence," was clearly over petitioner's head. Dr. Darning's testimony was uncontroverted.

3. The transcript of an interrogation of Mr. Tolden upon his arrest as well his Mr. Tolden's statement at his sentencing confirm that Mr. Tolden has significant oral communication difficulties making him difficult to understand. Written statements made by Mr. Tolden on a job

1 application and registration form, introduced at trial, confirm that his writing skills are at the
2 elementary school level. For example, he wrote regarding his job experience: "Janitor
3 experience, wax, fool, clean, take wax off. Clean restrooms, stock person, clean win, fix door."
4 He gave as his reason for leaving a job: "Season closed down this years." The evidence at trial
5 also showed that he does not know his own birth date or true name.

6 3. I have represented Mr. Tolden in his state appellate proceedings since 2002. I am
7 personally aware that Mr. Tolden's written skills are at or below second grade level. For
8 example, in his most recent letter, he requested with respect to mailing him the habeas corpus
9 petition: "Puls need ask you ken mail me a copy open Brife fix up mail out." I am confident that
10 Mr. Tolden is incapable of preparing any legal document, or a habeas corpus petition and a
11 traverse in particular, and of understanding or responding to any legal documents including
12 orders by the court, and pleadings submitted on his behalf or by opposing counsel.

13 5. Because I have no doubt that Mr. Tolden is incapable of preparing a habeas corpus
14 petition on his own and based on my belief in the merits of his claims, I have prepared the
15 petition on his behalf pro bono.

16 I declare under penalty of perjury that the foregoing is true and correct and that this
17 declaration was executed on August 6, 2008 at Oakland California.

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VICTORIA H. STAFFORD

PROOF OF SERVICE

The undersigned certifies that she is an active member of the State Bar of California, not a party to the within action, that her business address is 6114 La Salle Avenue, No. 161, Oakland, California 94611, and that she served a copy of the following documents:

MOTION FOR APPOINTMENT OF COUNSEL

by placing same in a sealed envelope, fully prepaying the postage thereon, and depositing said envelope in the United States Mail at Oakland, California on August 6, 2008 addressed as follows:

ATTORNEY GENERAL
455 Golden Gate Ave, Suite 11000
San Francisco, CA 94102-3664

Delano Tolden
T-51440
California State Prison, Solano
P.O. Box 4000
Vacaville, CA 95696-4000 94553

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Oakland, California.


VICTORIA H. STAFFORD